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IN THE CIRCUIT COURT OF FAULKNER COUNTY, ARKANSAS
THIRD DIVISION

RHONDA WHARTON, CLERK
BY BO DC

JASON HAYS and MELISSA HAYS, et al.

PLAINTIFFS

VS.

NO. 23CV-14-877

EXXON MOBIL CORPORATION, et al.

DEFENDANTS

**EXXON MOBIL CORPORATION'S
ANSWER TO AMENDED COMPLAINT**

Defendant Exxon Mobil Corporation ("ExxonMobil"), by and through undersigned counsel, for its answer to plaintiffs' amended complaint¹, states as follows:

1. States that plaintiffs' lawsuit speaks for itself; admits that on March 29, 2013, a release of crude oil near Mayflower, Arkansas, occurred; admits that certain adverse impacts resulted from the release; however, the extent and nature of any damages sustained by these plaintiffs are unknown to this defendant at this time; and denies the remaining allegations which are contained in paragraph 1 of the plaintiffs' amended complaint.

2. States that plaintiffs' lawsuit speaks for itself; admits that certain adverse impacts resulted from the release; however, the extent and nature of any damages sustained by these plaintiffs are unknown to this defendant at this time;

¹ Plaintiffs' original complaint was filed on November 24, 2014. Plaintiffs' amended complaint was filed on January 26, 2015. To the extent a response is required to the original complaint, all material allegations contained therein are denied unless specifically admitted in this answer.

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and denies the remaining allegations which are contained in paragraph 2 of the plaintiffs' amended complaint.

3. Admits that the Pegasus pipeline was used to transport conventionally produced Wabasca Heavy crude; admits that the Pegasus pipeline runs from Patoka, Illinois, to Nederland, Texas; admits that the portion of the Pegasus pipeline from Patoka, Illinois, to Corsicana, Texas, was constructed in 1947 and 1948; and denies the remaining allegations which are contained in paragraph 3 of the plaintiffs' amended complaint.

4. Admits that the Pegasus pipeline runs underground; admits that the Pegasus pipeline runs near some watershed resources, some of which provide drinking water; and denies the remaining allegations which are contained in paragraph 4 of the plaintiffs' amended complaint.

5. Admits that on March 29, 2013, a release of crude oil near Mayflower, Arkansas, occurred; admits that certain adverse impacts resulted from the release; however, the extent and nature of any damages sustained by these plaintiffs are unknown to this defendant at this time; and denies the remaining allegations which are contained in paragraph 5 of the plaintiffs' amended complaint.

6. States that plaintiffs' lawsuit speaks for itself; admits that the plaintiffs allege various causes of action arising from the release; and denies the remaining allegations which are contained in paragraph 6 of the plaintiffs' amended complaint.

7. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations which are contained in paragraph 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, and 42 of the plaintiffs' amended complaint, and therefore denies those allegations at this time.

8. Admits that ExxonMobil Pipeline Company ("EMPCo") is an indirect, wholly-owned subsidiary of ExxonMobil; admits that Mobil Pipe Line Company ("MPCo") is an affiliate of EMPCo; and denies the remaining allegations which are contained in paragraph 43 of the plaintiffs' amended complaint.

9. Admits that ExxonMobil is headquartered in Irving, Texas; denies that ExxonMobil is incorporated in Delaware; admits that ExxonMobil may be served through its agent for service of process; admits that ExxonMobil is the "world's largest publicly traded international oil and gas company"; and denies the remaining allegations which are contained in paragraph 44 of the plaintiffs' amended complaint.

10. Admits that EMPCo operates the Pegasus pipeline, which is owned by MPCo, an affiliate of EMPCo; admits that EMPCo is headquartered in Houston, Texas; admits that MPCo is headquartered in Houston, Texas; denies that ExxonMobil Pipeline Company, L.P. exists; and denies the remaining allegations which are contained in paragraph 45 of the plaintiffs' amended complaint.

11. Admits that defendant David Raulston is employed by EMPCo as an Operations/Maintenance Technician in Conway, Arkansas, and is a resident of

Faulkner County, Arkansas; but denies the remaining allegations which are contained in paragraph 46 of the plaintiffs' amended complaint.

12. Admits that EMPCo operates the Pegasus pipeline, which is owned by MPCo; and denies the remaining allegations which are contained in paragraph 47 of the plaintiffs' amended complaint.

13. Admits that this Court has personal jurisdiction as to this defendant; but denies the remaining allegations which are contained in paragraph 48 of the plaintiffs' amended complaint.

14. Admits that venue is proper in this county, but reserves the right to seek a transfer of venue; and denies the remaining allegations which are contained in paragraph 49 of the plaintiffs' amended complaint.

15. Admits that at times the plaintiffs' amended complaint refers to EMPCo, MPCo, ExxonMobil, and Raulston collectively as "ExxonMobil" or "Exxon"; but denies that it is appropriate to refer to these defendants collectively, and denies the remaining allegations which are contained in paragraph 50 of the plaintiffs' amended complaint.

16. Admits that on March 29, 2013, the Pegasus pipeline was owned by MPCo and operated by EMPCo; admits that the Pegasus pipeline was used to transport conventionally produced Wabasca Heavy crude through Arkansas; states that the term "tar sands" is subject to colloquial uses and varying understandings; further states that ExxonMobil considers the oil released on March 29, 2013, to be conventionally produced Wabasca Heavy crude; and denies

the remaining allegations which are contained in paragraph 51 of the plaintiffs' amended complaint.

17. Denies the allegations which are contained in paragraph 52 of the plaintiffs' amended complaint.

18. Admits that the portion of the Pegasus pipeline from Patoka, Illinois, to Corsicana, Texas, was constructed in 1947 and 1948, and is approximately 650 miles long; but denies the remaining allegations which are contained in paragraph 53 of the plaintiffs' amended complaint.

19. Denies the allegations which are contained in paragraph 54 of the plaintiffs' amended complaint.

20. Denies the allegations which are contained in paragraph 55 of the plaintiffs' amended complaint.

21. Denies the allegations which are contained in paragraph 56 of the plaintiffs' amended complaint.

22. Admits that the Pegasus pipeline is a primarily 20-inch pipeline; admits that most, but not all, of the pipeline has a .312 inch wall thickness; admits that the Pegasus pipeline has a capacity of approximately 95,000 barrels per day; and denies the remaining allegations which are contained in paragraph 57 of the plaintiffs' amended complaint.

23. Admits that the Pegasus pipeline is an API 5LX-42 pipe that contains both seamless pipe and low frequency electric resistance welded steel pipe in response to paragraph 58 of the plaintiffs' amended complaint.

24. Denies the allegations which are contained in paragraph 59 of the plaintiffs' amended complaint.

25. Admits that the Pegasus pipeline runs from Nederland, Texas, to Patoka, Illinois, which is a distance of approximately 850 miles, in response to paragraph 60 of the plaintiffs' amended complaint.

26. Admits that the pipeline runs near some watershed resources, some of which provide drinking water; but denies the remaining allegations which are contained in paragraph 61 of the plaintiffs' amended complaint.

27. Admits that the pipeline did carry product from south to north at times before 2006; but denies the remaining allegations which are contained in paragraph 62 of the plaintiffs' amended complaint.

28. Admits that the pipeline did carry product from south to north at times before 2006; but denies the remaining allegations which are contained in paragraph 63 of the plaintiffs' amended complaint.

29. Admits that the flow of liquids in the Pegasus pipeline between Patoka, Illinois, and Corsicana, Texas, ran from north to south in 2006; admits that the pipeline was used to transport conventionally produced Wabasca Heavy crude; states that the term "tar sands" is subject to colloquial uses and varying understandings; further states that ExxonMobil considers the oil released on March 29, 2013, to be conventionally produced Wabasca Heavy crude; and denies the remaining allegations which are contained in paragraph 64 of the plaintiffs' amended complaint.

30. Admits that Mike Tudor is the former President of EMPCo; states that Tudor's public statements speak for themselves; and denies the remaining allegations which are contained in paragraph 65 of the plaintiffs' amended complaint.

31. Denies the allegations which are contained in paragraph 66 of the plaintiffs' amended complaint.

32. Admits that the flow of liquids in the Pegasus pipeline between Patoka, Illinois, and Corsicana, Texas, ran from north to south in 2006; admits that the pipeline was used to transport conventionally produced Wabasca Heavy crude; states that the terms "tar sands" and "bitumen" are subject to colloquial uses and varying understandings; further states that ExxonMobil considers the oil released on March 29, 2013, to be conventionally produced Wabasca Heavy crude; and denies the remaining allegations which are contained in paragraph 67 of the plaintiffs' amended complaint.

33. States that the term "bitumen" is subject to colloquial uses and varying understandings; states that ExxonMobil considers the oil released on March 29, 2013, to be conventionally produced Wabasca Heavy crude; and denies the remaining allegations which are contained in paragraph 68 of the plaintiffs' amended complaint.

34. States that the terms "bitumen" and "dilbit" are subject to colloquial uses and varying understandings; states that ExxonMobil considers the oil released on March 29, 2013, to be conventionally produced Wabasca Heavy crude; admits

that certain additives are included, consistent with applicable governmental guidelines to meet pipeline specifications; but denies the remaining allegations which are contained in paragraph 69 of the plaintiffs' amended complaint.

35. States that the term "dilbit" is subject to colloquial uses and varying understandings; states that ExxonMobil considers the oil released on March 29, 2013, to be conventionally produced Wabasca Heavy crude; and denies the remaining allegations which are contained in paragraph 70 of the plaintiffs' amended complaint.

36. Admits that in 2007 and 2008, EMPCo considered constructing the Texas Access Pipeline, which would have been an approximately 768-mile, 30-inch diameter pipeline running from Patoka, Illinois, to Nederland, Texas, with a capacity of 445,000 barrels per day; but denies that the Texas Access Pipeline would have served as a replacement for the Pegasus pipeline; and denies the remaining allegations which are contained in paragraph 71 of the plaintiffs' amended complaint.

37. Admits that the Texas Access Pipeline would have been a joint venture between EMPCo and Enbridge (U.S.) Inc.; but denies the remaining allegations which are contained in paragraph 72 of the plaintiffs' amended complaint.

38. Admits that in 2009, an expansion project was completed on the Pegasus pipeline that increased capacity by approximately 30,000 barrels per day; but denies the remaining allegations which are contained in paragraph 73 of the plaintiffs' amended complaint.

39. Denies the allegations which are contained in paragraph 74 of the plaintiffs' amended complaint.

40. Denies the allegations which are contained in paragraph 75 of the plaintiffs' amended complaint.

41. Denies the allegations which are contained in paragraph 76 of the plaintiffs' amended complaint.

42. Denies the allegations which are contained in paragraph 77 of the plaintiffs' amended complaint.

43. Denies that this defendant failed to exercise due care or follow applicable laws and standards that proximately caused any injuries or damages sustained by the plaintiffs, the extent and nature of which are unknown to this defendant at this time; further states that the allegations which are contained in paragraph 78 of the plaintiffs' amended complaint call for a legal conclusion and require no response from this defendant. To the extent a response is required, the allegations are denied.

44. Denies the allegations which are contained in paragraph 79 of the plaintiffs' amended complaint.

45. Denies the allegations which are contained in paragraph 80 of the plaintiffs' amended complaint.

46. States that U.S. Department of Transportation's statements and pronouncements speak for themselves; and denies the remaining allegations which are contained in paragraph 81 of the plaintiffs' amended complaint.

47. Denies the allegations which are contained in paragraph 82 of the plaintiffs' amended complaint.

48. Denies the allegations which are contained in paragraph 83 of the plaintiffs' amended complaint.

49. States that the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration's ("PHMSA") statements and pronouncements speak for themselves; and denies the remaining allegations which are contained in paragraph 84 of the plaintiffs' amended complaint.

50. States that PHMSA's statements and pronouncements speak for themselves; and denies the remaining allegations which are contained in paragraph 85 of the plaintiffs' amended complaint.

51. States that PHMSA's statements and pronouncements speak for themselves; and denies the remaining allegations which are contained in paragraph 86 of the plaintiffs' amended complaint.

52. Denies the allegations which are contained in paragraph 87 of the plaintiffs' amended complaint.

53. Denies the allegations which are contained in paragraph 88 of the plaintiffs' amended complaint.

54. Denies the allegations which are contained in paragraph 89 of the plaintiffs' amended complaint.

55. Denies the allegations which are contained in paragraph 90 of the plaintiffs' amended complaint.

56. Denies the allegations which are contained in paragraph 91 of the plaintiffs' amended complaint.

57. Denies the allegations which are contained in paragraph 92 of the plaintiffs' amended complaint.

58. Denies the allegations which are contained in paragraph 93 of the plaintiffs' amended complaint.

59. Denies the allegations which are contained in paragraph 94 of the plaintiffs' amended complaint.

60. Denies the allegations which are contained in paragraph 95 of the plaintiffs' amended complaint.

61. Admits that there have been releases on other pipeline systems that contain ERW pipe manufactured before 1970; but denies the remaining allegations which are contained in paragraph 96 of the plaintiffs' amended complaint.

62. Admits that a release occurred in 1987 near Corsicana, Texas, and in 1990 near Bragg, Texas, on the segment of the Pegasus pipeline from Corsicana to Nederland, Texas; admits that a release occurred outside of Hot Springs, Arkansas, in 1995 when the line was struck by a county road grader; admits that a release occurred near Doniphan, Missouri, in 2013 due to a third party; and denies the remaining allegations which are contained in paragraph 97 of the plaintiffs' amended complaint.

63. Denies the allegations which are contained in paragraph 98 of the plaintiffs' amended complaint.

64. Admits that portions of the Pegasus pipeline were idled from 2002 to 2006; but denies the remaining allegations which are contained in paragraph 99 of the plaintiffs' amended complaint.

65. Admits that hydrostatic testing was conducted on the Pegasus pipeline in 2005/2006; but denies the remaining allegations which are contained in paragraph 100 of the plaintiffs' amended complaint.

66. States that the results of the 1991 and 2005/2006 hydrostatic tests speak for themselves; and denies the remaining allegations which are contained in paragraph 101 of the plaintiffs' amended complaint.

67. States that the results of the 2005/2006 hydrostatic tests speak for themselves; and denies the remaining allegations which are contained in paragraph 102 of the plaintiffs' amended complaint.

68. States that the results of the 1991 hydrostatic tests speak for themselves; and denies the remaining allegations which are contained in paragraph 103 of the plaintiffs' amended complaint.

69. States that the results of the 1991 hydrostatic tests speak for themselves; and denies the remaining allegations which are contained in paragraph 104 of the plaintiffs' amended complaint.

70. States that the results of the 1991 and 2005/2006 hydrostatic tests speak for themselves; and denies the remaining allegations which are contained in paragraph 105 of the plaintiffs' amended complaint.

71. Denies the allegations which are contained in paragraph 106 of the plaintiffs' amended complaint.

72. Denies the allegations which are contained in paragraph 107 of the plaintiffs' amended complaint.

73. Denies the allegations which are contained in paragraph 108 of the plaintiffs' amended complaint.

74. Denies the allegations which are contained in paragraph 109 of the plaintiffs' amended complaint.

75. Denies the allegations which are contained in paragraph 110 of the plaintiffs' amended complaint.

76. Admits that on or about March 29, 2013, a release of oil occurred involving the Pegasus pipeline in Mayflower, Faulkner County, Arkansas; states that the precise amount of oil released is unknown to this defendant at this time; and denies the remaining allegations which are contained in paragraph 111 of the plaintiffs' amended complaint.

77. States that the law governing reporting of oil pipeline spills speaks for itself; and denies the remaining allegations which are contained in paragraph 112 of the plaintiffs' amended complaint.

78. Denies the allegations which are contained in paragraph 113 of the plaintiffs' amended complaint.

79. Denies the allegations which are contained in paragraph 114 of the plaintiffs' amended complaint.

80. Denies the allegations which are contained in paragraph 115 of the plaintiffs' amended complaint.

81. Denies the allegations which are contained in paragraph 116 of the plaintiffs' amended complaint.

82. Admits that the release from the pipeline came into contact with certain lots, streets, and drainage ditches in the Northwoods subdivision, and in some other areas prior to containment; admits that some residents were evacuated by local authorities; and denies the remaining allegations which are contained in paragraph 117 of the plaintiffs' amended complaint.

83. Denies the allegations which are contained in paragraph 118 of the plaintiffs' amended complaint.

84. Admits that certain adverse impacts resulted from the release; however, the extent and nature of any damages sustained by these plaintiffs are unknown to this defendant at this time; and denies the remaining allegations which are contained in paragraph 119 of the plaintiffs' amended complaint.

85. Admits that certain adverse impacts resulted from the release; however, the extent and nature of any damages sustained by these plaintiffs are unknown to this defendant at this time; and denies the remaining allegations which are contained in paragraph 120 of the plaintiffs' amended complaint.

86. States that the "Data provided by Exxon" speaks for itself; and denies the remaining allegations which are contained in paragraph 121 of the plaintiffs' amended complaint.

87. Denies the allegations which are contained in paragraph 122 of the plaintiffs' amended complaint.

88. Admits that the March 29, 2013, release occurred on the segment of the Pegasus pipeline from Corsicana, Texas, to Patoka, Illinois; admits that, as ordered by PHMSA, a fifty-foot section of the pipeline was removed and transported to Hurst Metallurgical Research Laboratory in Texas; and denies the remaining allegations which are contained in paragraph 123 of the plaintiffs' amended complaint.

89. States that Hurst's report speaks for itself; and denies the remaining allegations which are contained in paragraph 124 of the plaintiffs' amended complaint.

90. Admits that EMPCo has retained Hurst on at least one prior occasion; but denies the remaining allegations which are contained in paragraph 125 of the plaintiffs' amended complaint.

91. Admits that EMPCo and PHMSA were provided with a preliminary version of Hurst's report and that EMPCo proposed certain revisions to Hurst and PHMSA; but denies the remaining allegations which are contained in paragraph 126 of the plaintiffs' amended complaint.

92. States that the preliminary draft of the Hurst report speaks for itself; and denies the remaining allegations which are contained in paragraph 127 of the plaintiffs' amended complaint.

93. States that the preliminary draft of the Hurst report speaks for itself; and denies the remaining allegations which are contained in paragraph 128 of the plaintiffs' amended complaint.

94. States that the preliminary draft of the Hurst report speaks for itself; and denies the remaining allegations which are contained in paragraph 129 of the plaintiffs' amended complaint.

95. States that the preliminary draft of the Hurst report speaks for itself; and denies the remaining allegations which are contained in paragraph 130 of the plaintiffs' amended complaint.

96. States that the preliminary draft of the Hurst report speaks for itself; and denies the remaining allegations which are contained in paragraph 131 of the plaintiffs' amended complaint.

97. States that EMPCo's public communications speak for themselves; and denies the remaining allegations which are contained in paragraph 132 of the plaintiffs' amended complaint.

98. Denies the allegations which are contained in paragraph 133 of the plaintiffs' amended complaint.

99. Denies the allegations which are contained in paragraph 134 of the plaintiffs' amended complaint.

100. States that defendants comply with all applicable industry safety, inspection, and maintenance standards in the operation of the Pegasus pipeline;

and denies the remaining allegations which are contained in paragraph 135 of the plaintiffs' amended complaint.

101. Denies the allegations which are contained in paragraph 136 of the plaintiffs' amended complaint.

102. Denies the allegations which are contained in paragraph 137 of the plaintiffs' amended complaint.

103. Denies the allegations which are contained in paragraph 138 of the plaintiffs' amended complaint.

104. Denies the allegations which are contained in paragraph 139 of the plaintiffs' amended complaint.

105. Restates and re-alleges responses to the previous paragraphs of the plaintiffs' amended complaint as though fully set forth herein in response to paragraph 140 of the plaintiffs' amended complaint.

106. Denies the allegations which are contained in paragraph 141 of the plaintiffs' amended complaint.

107. Denies the allegations which are contained in paragraph 142 of the plaintiffs' amended complaint.

108. Admits that EMPCo operates the Pegasus pipeline, which is owned by MPCo; admits that the Pegasus pipeline was used to transport conventionally produced Wabasca Heavy crude; admits that the Pegasus pipeline runs from Patoka, Illinois, to Nederland, Texas; but denies the remaining allegations which are contained in paragraph 143 of the plaintiffs' amended complaint.

109. Denies the allegations which are contained in paragraph 144 of the plaintiffs' amended complaint.

110. Denies that plaintiffs are entitled to any award of damages; and denies the remaining allegations which are contained in paragraph 145 of the plaintiffs' amended complaint.

111. Restates and re-alleges responses to the previous paragraphs of the plaintiffs' amended complaint as though fully set forth herein in response to paragraph 146 of the plaintiffs' amended complaint.

112. States that paragraph 147 of the plaintiffs' amended complaint states a legal conclusion that requires no response from this defendant. To the extent a response is required, the allegations of paragraph 147 are denied.

113. Admits that EMPCo operates the Pegasus pipeline, which is owned by MPCo; admits that the Pegasus pipeline was used to transport conventionally produced Wabasca Heavy crude; admits that the Pegasus pipeline runs from Patoka, Illinois, to Nederland, Texas; but denies the remaining allegations which are contained in paragraph 148 of the plaintiffs' amended complaint.

114. Denies the allegations which are contained in paragraph 149 of the plaintiffs' amended complaint.

115. Denies the allegations which are contained in paragraph 150 of the plaintiffs' amended complaint.

116. Denies that plaintiffs are entitled to any award of damages; and denies the remaining allegations which are contained in paragraph 151 of the plaintiffs' amended complaint.

117. Restates and re-alleges responses to the previous paragraphs of the plaintiffs' amended complaint as though fully set forth herein in response to paragraph 152 of the plaintiffs' amended complaint.

118. Denies the allegations which are contained in paragraph 153 of the plaintiffs' amended complaint.

119. Admits that the Pegasus pipeline contains ERW pipe manufactured before the 1970s; admits that a release occurred in 1987 near Corsicana, Texas, on the segment of the Pegasus pipeline from Corsicana to Nederland, Texas; and denies the remaining allegations which are contained in paragraph 154 of the plaintiffs' amended complaint.

120. Denies the allegations which are contained in paragraph 155 of the plaintiffs' amended complaint.

121. Denies that plaintiffs are entitled to any award of damages; and denies the remaining allegations which are contained in paragraph 156 of the plaintiffs' amended complaint.

122. Restates and re-alleges responses to the previous paragraphs of the plaintiffs' amended complaint as though fully set forth herein in response to paragraph 157 of the plaintiffs' amended complaint.

123. Admits that the Pegasus pipeline contains ERW pipe manufactured before the 1970s; but denies the remaining allegations which are contained in paragraph 158 of the plaintiffs' amended complaint.

124. Denies the allegations which are contained in paragraph 159 of the plaintiffs' amended complaint.

125. Denies that plaintiffs are entitled to any award of punitive damages; and denies the remaining allegations which are contained in paragraph 160 of the plaintiffs' amended complaint.

126. This defendant joins in request for a jury trial in response to paragraph 161 of the plaintiffs' amended complaint.

127. States that paragraph 162 of the plaintiffs' amended complaint states a legal conclusion that requires no response from this defendant. To the extent a response is required, the allegations of paragraph 162 are denied.

128. Denies that plaintiffs are entitled to the relief requested in paragraph 163 of the plaintiffs' amended complaint, including subparts (a)-(s).

129. Denies all material allegations in the plaintiffs' amended complaint not specifically admitted herein.

Additional Defenses

130. In further response to the plaintiffs' amended complaint, ExxonMobil asserts the following additional defenses. ExxonMobil reserves the right to amend this answer to assert additional defenses, cross-claims, third party claims, and

other claims and defenses as may be appropriate following further investigation and discovery.

First Defense

131. States that some or all of the plaintiffs' claims fail to state facts or claims for which relief can be granted against this defendant.

Second Defense

132. States that the plaintiffs' claims are barred in whole or in part by the doctrines of intervening and/or superseding cause.

Third Defense

133. States that some or all of the plaintiffs' alleged damages are subject to a set-off.

Fourth Defense

134. Still denying liability to the plaintiffs, states that to the extent there is any actionable liability, this defendant is entitled to a proration of fault under the Arkansas Uniform Contribution Among Tortfeasors Act, Arkansas Civil Justice Reform Act of 2003, and as otherwise provided by law.

Fifth Defense

135. States that any injuries or damages claimed by the plaintiffs were the proximate result of actions, fault or comparative fault, of other parties, persons or entities, over whom this defendant exercised no control and for whose actions this defendant has no liability or responsibility, and/or resulted from an intervening proximate cause.

Sixth Defense

136. Adopts all defenses available to this defendant under the Arkansas Civil Justice Reform Act of 2003.

Seventh Defense

137. Adopts all defenses available to this defendant under the Arkansas Product Liability Act, Ark. Code Ann. § 16-116-101 et seq.

Eighth Defense

138. States that some or all of the plaintiffs have failed to mitigate their alleged damages.

Ninth Defense

139. Adopts all defenses available to this defendant under any and all applicable state or federal regulations.

Tenth Defense

140. The plaintiffs' amended complaint fails to state any claim against ExxonMobil for punitive damages upon which relief may be granted.

Eleventh Defense

141. The plaintiffs' claim for punitive damages is barred and or limited by:

- (a) The Due Process Clauses (including substantive and procedural) of the Fifth and Fourteenth Amendments to the United States Constitution and Art. 2, § 8 of the Arkansas Constitution;

- (b) The Takings Clause of the Fifth and Fourteenth Amendments to the United States Constitution and Art. 2, § 21 of the Arkansas Constitution;
- (c) The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Art. 2, § 3 of the Arkansas Constitution;
- (d) The Eighth Amendment to the United States Constitution and Art. 2, § 9 of the Arkansas Constitution;
- (e) The Fifth and Sixth Amendments to the United States Constitution;
- (f) Article I, Section 8 of the United States Constitution;
- (g) The Supremacy Clause of Article VI, Section 2 of the United States Constitution; and
- (h) The doctrine of Separation of Powers arising under the United States Constitution.

Twelfth Defense

142. The plaintiffs' claim for punitive damages is barred by the Due Process Clauses of the United States Constitution (Amendment V and Amendment XIV, § 1) and by the Due Process Clause of the Arkansas Constitution (Article 2, § 8), because the laws of this State governing punitive damages provide inadequate procedural protections against arbitrary or erroneous awards of such damages. A state may constitutionally award punitive damages only if the law of that state provides significant and effective procedural protections to defendants, and the law of this

State does not. See *Phillip Morris USA v. Williams*, 549 U.S. 346, 352, 127 S. Ct. 1057, 1062 (2007).

Thirteenth Defense

143. The plaintiffs' claim for punitive damages is barred by the Due Process Clauses of the United States Constitution (Amendment V and Amendment XIV, § 1) and by the Due Process Clause of the Arkansas Constitution (Article 2, § 8), because defendant lacked adequate notice either of the type of conduct that could warrant an award of punitive damages under the law of this State, or of the amount of such damages that could be awarded. The lack of fair notice bars any award of punitive damages. *Phillip Morris USA v. Williams*, 549 U.S. 346, 127 S. Ct. 1057, 1059 (2007).

Fourteenth Defense

144. The plaintiffs' claim for punitive damages is barred by the Due Process Clauses of the United States Constitution (Amendment V and Amendment XIV, § 1) and by the Due Process Clause of the Arkansas Constitution (Article 2, § 8), because due process requires that any award of punitive damages bear a close relationship to appropriate civil fines or penalties established by the legislature, or by administrative agencies under authority delegated by the legislature. *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 583-84, 116 S. Ct. 1589, 1603 (1996). The law of this State, however, fails to incorporate this due process requirement, and therefore no award of punitive damages may be constitutionally made under the law of this State.

Fifteenth Defense

145. The plaintiffs' claim for punitive damages is barred by the Due Process Clauses of the United States Constitution (Amendment V and Amendment XIV, § 1) and by the Due Process Clause of the Arkansas Constitution (Article 2, § 8), because punitive damages, as awarded in this State, impermissibly discriminate against corporate defendants, including the defendant in this case, that are organized under the laws of other states and that maintain their principal places of business in other states. *Honda Motor Co. v. Oberg*, 512 U.S. 415, 432, 114 S. Ct. 2331, 2341 (1994) (noting risk "that jurors will use their verdicts to express biases against big businesses, particularly those without strong local presences").

Sixteenth Defense

146. The plaintiffs' claim for punitive damages is barred by the Due Process Clauses of the United States Constitution (Amendment V and Amendment XIV, § 1), by the Due Process Clause of the Arkansas Constitution (Article 2, § 8), by the Commerce Clause of the United States Constitution (Article I, § 8, cl. 3), and by principles of federalism embodied in the Constitution, to the extent that any claim is based on any conduct by defendant that occurred outside this State. No *legitimate* interest of this State can be served by the imposition of punitive damages based on conduct that occurred outside this State; therefore, the limitations on state power in the Due Process and Commerce Clauses prohibit any award of punitive damages based on such conduct. *See State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 409, 123 S. Ct. 1513, 1516 (2003).

Seventeenth Defense

147. The plaintiffs' claim for punitive damages is barred by the Due Process Clauses of the United States Constitution (Amendment V and Amendment XIV, § 1) and by the Due Process Clause of the Arkansas Constitution (Article 2, § 8), because the law of this State permits the introduction of evidence of defendant's financial condition [or "net worth"] with respect to the quantum of punitive damages. The introduction of such evidence violates Due Process by inviting the jury to award an arbitrary amount of punitive damages based on defendant's status as an industrial enterprise. *Honda Motor Co. v. Oberg*, 512 U.S. 415, 432, 114 S. Ct. 2331, 2341 (1994).

Eighteenth Defense

148. The plaintiffs' claim for punitive damages is barred by the Due Process Clauses of the United States Constitution (Amendment V and Amendment XIV, § 1) and by the Due Process Clause of the Arkansas Constitution (Article 2, § 8), because the defendant's conduct that is alleged to warrant punitive damages is unrelated to the plaintiffs' harm. Punitive damages may not be awarded to punish and deter conduct that bears no relation to the plaintiffs' harm. *Phillip Morris USA v. Williams*, 549 U.S. 346, 353, 127 S. Ct. 1057, 1063 (2007).

Nineteenth Defense

149. The plaintiffs' claim for punitive damages is barred by the Due Process Clauses of the United States Constitution (Amendment V and Amendment XIV, § 1) and by the Due Process Clause of the Arkansas Constitution (Article 2, § 8), because

the law of this State governing punitive damages does not require that the jury be instructed upon, and make specific findings of fact with respect to, each of the five reprehensibility factors set out in *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408, 419, 123 S. Ct. 1513, 1521 (2003). Such specific jury instructions and specific findings of fact are necessary for purposes of Due Process in order to permit the *de novo* review of the quantum of any award of punitive damages required by *Cooper Indus. Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 436, 121 S. Ct. 1678, 1685-1686 (2001).

Twentieth Defense

150. The plaintiffs' claim for punitive damages is barred by the Due Process Clauses of the United States Constitution (Amendment V and Amendment XIV, § 1) and by the Due Process Clause of the Arkansas Constitution (Article 2, § 8), because the law of this State governing punitive damages does not require that the jury be instructed upon, and make specific findings of fact with respect to, the constitutional factors that govern the permissible ratio of punitive damages to compensatory damages. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 425, 123 S. Ct. 1513, 1524 (2003). Such specific jury instructions and specific findings of fact are necessary for purposes of Due Process in order to permit the *de novo* review of the quantum of any award of punitive damages required by *Cooper Indus. Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 436, 121 S. Ct. 1678, 1685-1686 (2001).

Twenty-First Defense

151. The plaintiffs' claim for punitive damages is barred by the Due Process Clauses of the United States Constitution (Amendment V and Amendment XIV, § 1) and by the Due Process Clause of the Arkansas Constitution (Article 2, § 8), because the law of this State governing punitive damages does not require that the jury be instructed upon, and make specific findings of fact with respect to, the comparable civil fine that could be imposed on the defendant for the conduct in question. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 428 123 S. Ct. 1513, 1531 (2003); *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 583, 116 S. Ct. 1589, 1603 (1996); *Clark v. Chrysler Corp.*, 436 F. 3d 594, 607 (6th Cir. 2006). Such specific jury instructions and specific findings of fact on the comparable civil penalties are necessary for purposes of Due Process in order to permit the *de novo* review of the quantum of any award of punitive damages required by *Cooper Indus. Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 436, 121 S. Ct. 1678, 1685-1686 (2001).

Twenty-Second Defense

152. The plaintiffs' claim for punitive damages is barred by the Due Process Clauses of the United States Constitution (Amendment V and Amendment XIV, § 1) and by the Due Process Clause of the Arkansas Constitution (Article 2, § 8), because the law of this State governing punitive damages does not require that the jury be instructed upon, and make specific findings of fact with respect to, the direct relationship between the defendant's conduct and the specific injury suffered by plaintiffs. *Phillip Morris USA v. Williams*, 549 U.S. 346, 355, 127 S. Ct. 1057, 1064

(2007); *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 423, 123 S. Ct. 1513, 1523 (2003). Such specific jury instructions and specific findings of fact are necessary for purposes of Due Process in order to permit the *de novo* review of the quantum of any award of punitive damages required by *Cooper Indus. Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 436, 121 S. Ct. 1678, 1685-1686 (2001), to ensure that the award is based solely on the conduct that caused specific injury to the plaintiffs.

Twenty-Third Defense

153. The plaintiffs' claim for punitive damages is barred by the Due Process Clauses of the United States Constitution (Amendment V and Amendment XIV, § 1) and by the Due Process Clause of the Arkansas Constitution (Article 2, § 8), because the law of this State governing punitive damages does not require that the jury be instructed upon, and make specific findings of fact with respect to, the exclusion of all items of compensatory damage from the quantum of punitive damages. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 426, 123 S. Ct. 1513, 1525 (2003). Such specific jury instructions and specific findings of fact are necessary for purposes of Due Process in order to permit the *de novo* review required by *Cooper Indus. Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), to ensure that items of compensatory damages are not impermissibly "double-counted" in the quantum of punitive damages.

Twenty-Fourth Defense

154. The plaintiffs have failed to join indispensable parties necessary for a just adjudication of this lawsuit.

Twenty-Fifth Defense

155. The plaintiffs' claims should be dismissed because they are preempted in whole or in part by applicable federal statutes, regulations, guidance documents, notices, and policy statements, enacted and/or promulgated and/or issued by Congress, applicable federal agencies, and the White House.

Twenty-Sixth Defense

156. ExxonMobil is not liable for the plaintiffs' alleged injuries or damages because the applicable entities have complied fully with all applicable statutes and regulations.

Twenty-Seventh Defense

157. ExxonMobil is not liable for the plaintiffs' alleged injuries or damages because the applicable entities acted in conformity with generally recognized, state-of-the-art standards in the industry.

Twenty-Eighth Defense

158. The plaintiffs are improperly joined.

Twenty-Ninth Defense

159. The plaintiffs' claims are barred because of lack of standing.

Thirtieth Defense

160. To the extent the plaintiffs purport to assert claims on behalf of unnamed or unidentified persons or entities, including unnamed or unidentified partners or shareholders, the amended complaint fails to state any claim on behalf of such unnamed or unidentified partners or shareholders against ExxonMobil upon which relief may be granted.

Thirty-First Defense

161. Plaintiffs have failed to obtain proper service of valid process on ExxonMobil, and plaintiffs' amended complaint against it should therefore be dismissed pursuant to Rules 12(b)(4) and 12(b)(5) of the Arkansas Rules of Civil Procedure.

Thirty-Second Defense

162. ExxonMobil hereby incorporates by reference any defense asserted by any other party to this action, to the extent such defense may preclude or limit the liability of ExxonMobil.

Thirty-Third Defense

163. ExxonMobil denies any allegation made outside of, or in addition to, the numbered paragraphs of the amended complaint.

WHEREFORE, Exxon Mobil Corporation requests that the amended complaint of the plaintiffs be dismissed as to it, and that it be awarded its costs and all other proper relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On March 12, 2015, a copy of the foregoing was served by U.S. mail on the following:

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